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No. 96-602

In the Supreme Court of the United States

OCTOBER TERM, 1996

CHRISTI HAAS, PARENT AND NATURAL GUARDIAN OF SCOTT M. GLENN, II, PETITIONER

v.

SHIRLEY CHATER, COMMISSIONER OF SOCIAL SECURITY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

The Social Security Act provides that an illegitimate child is eligible for survivor's benefits upon the death of an insured parent if, *inter alia*, the child would be entitled to inherit personal property under "such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which [the] insured individual * * * was domiciled at the time of his death." 42 U.S.C. 416(h)(2)(A). Petitioner's child is not eligible to inherit under applicable Indiana law, Ind. Code § 29-1-2-7(b) (Michie 1989), because no action to establish paternity was brought on the child's behalf within five months of the insured individual's death. The question presented is whether the Social Security Act unconstitutionally limits the ability of illegitimate children to obtain survivor's benefits.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	2
Statement	2
Argument	8
Conclusion	16

TABLE OF AUTHORITIES

Cases:

Arkansas Writers' Project, Inc. v. *Ragland*, 481 U.S. 221 (1987)	15
Clark v. *Jeter*, 486 U.S. 456 (1988)	7, 9, 11, 14
Daniels v. *Sullivan*, 979 F.2d 1516 (11th Cir. 1992)	15
Durant v. *Essex Co.*, 74 U.S. (7 Wall.) 107 (1869)	15
Frisby v. *Schultz*, 487 U.S. 474 (1988)	15
Handley v. *Schweiker*, 697 F.2d 999 (11th Cir. 1983)	15
Hill v. *Lockhart*, 474 U.S. 52 (1985)	15
Jimenez v. *Weinberger*, 417 U.S. 628 (1974)	3
Lalli v. *Lalli*, 439 U.S. 259 (1978)	6, 10, 11
Lawrence v. *Chater*, 116 S. Ct. 604 (1996)	14
Mathews v. *Lucas*, 427 U.S. 495 (1976)	3-4, 6, 8, 12, 13
Mills v. *Habluetzel*, 456 U.S. 91 (1982)	7, 9, 11, 13-14
Neil v. *Biggers*, 409 U.S. 188 (1972)	15
Orsini v. *Sullivan*, 903 F.2d 1393 (11th Cir. 1990)	15
Pickett v. *Brown*, 462 U.S. 1 (1983)	7, 9, 14
Reed v. *Campbell*, 476 U.S. 852 (1986)	12
S.V. v. *Estate of Bellamy*, 579 N.E.2d 144 (Ind. Ct. App. 1991)	5, 6
Supreme Court of New Hampshire v. *Piper*, 470 U.S. 274 (1985)	15
Trimble v. *Gordon*, 430 U.S. 762 (1977)	9, 10

Statutes: Page

Social Security Act, 42 U.S.C. 301 *et seq.*:
42 U.S.C. 402(d)(1)(C) 2
42 U.S.C. 402(d)(3) 2
42 U.S.C. 416(h)(2) 4-5
42 U.S.C. 416(h)(2)(A) 3, 4, 5
42 U.S.C. 416(h)(2)(B) 2
42 U.S.C. 416(h)(3) 2, 5
42 U.S.C. 416(h)(3)(C)(i) 2
42 U.S.C. 416(h)(3)(C)(ii) 2
Ind. Code § 29-1-2-7(b) (Michie 1989) 5, 12

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OPINIONS BELOW

The order of the en banc court of appeals, affirming the judgment of the district court by an equally divided court (Pet. App. 1a), is unpublished, but the decision is noted at 89 F.3d 838 (Table). The opinion of a panel of the court of appeals is reported at 79 F.3d 559, together with an order of the en banc court vacating the panel's decision (Pet. App. 2a-26a, 47a). The orders of the district court (Pet. App. 27a-36a), the Appeals Council of the Department of Health and Human Services (Pet. App. 37a-39a), and the administrative law judge (Pet. App. 40a-44a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 18, 1996. Pet. App. 48a. On September 5, 1996, Justice Stevens extended the time for filing a petition for a writ of certiorari to and including October 16, 1996. The petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under the Social Security Act, unmarried minor children of a deceased individual who was insured under the Act may receive survivor's benefits if they were "dependent upon such individual" prior to his death. 42 U.S.C. 402(d)(1)(C). A child who is legitimate or legally adopted by the insured is deemed dependent and thus is entitled to benefits. 42 U.S.C. 402(d)(3). An illegitimate child can establish dependency by several means. First, the child may show that the insured was his or her parent and was living with the child or contributing to his or her support at the time of the insured's death. 42 U.S.C. 416(h)(3)(C)(ii). Second, the child may show that his or her parents went through a purported marriage ceremony, but that their marriage was invalid because of a legal impediment. 42 U.S.C. 416(h)(2)(B). Third, the child may show that the insured, prior to his death, had (a) acknowledged the child as his son or daughter in writing, (b) been decreed by a court to be the child's parent, or (c) been ordered by a court to contribute to the support of the child on the basis of parenthood. 42 U.S.C. 416(h)(3)(C)(i). Section 402(d)(3) provides that a child who meets any of the tests in Sections 416(h)(2)(B) and 416(h)(3) "shall be deemed to be the legitimate child of such individual."

In addition, an illegitimate child can qualify for benefits without meeting any of the foregoing tests for showing dependency if the child is entitled to inherit personal property under "such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which [the] insured individual * * * was domiciled at the time of his death." 42 U.S.C. 416(h)(2)(A). An illegitimate child who meets the standard of Section 416(h)(2)(A) is also deemed to be legitimate and therefore dependent. See *Mathews* v. *Lucas*, 427 U.S. 495, 514-515 n.17 (1976); see also *Jimenez* v. *Weinberger*, 417 U.S. 628, 631 n.2 (1974).

In *Mathews* v. *Lucas*, *supra*, the Court upheld the constitutionality of 42 U.S.C. 416(h)(2)(A) and other provisions of the Social Security Act dealing with an illegitimate child's right to survivor's benefits. The Court noted that the reason for the various criteria was "to determin[e] * * * dependency", so that the Act would "provid[e] only for those children for whom the loss of the parent is an immediate source of * * * need." 427 U.S. at 507. The Court specifically explained the rationale for Section 416(h)(2)(A):

> [W]here state intestacy law provides that a child may take personal property from a father's estate, it may reasonably be thought that the child will more likely be dependent during the parent's life and at his death. For in its embodiment of the popular view within the jurisdiction of how a parent would have his property devolve among his children in the event of death, without specific directions, such legislation also reflects to some degree the popular conception within the jurisdiction of the felt parental obligation to such an

> "illegitimate" child in other circumstances, and thus something of the likelihood of actual parental support during, as well as after, life.

427 U.S. at 514-515 (footnote omitted). In short, Congress incorporated state law of intestacy into Section 416(h)(2)(A) because it believed that body of state law, together with the other eligibility criteria discussed above (*e.g.*, a written acknowledgment of paternity or a paternity decree), constituted a "narrow set of objective and apparently reasonable indicators" of a "likelihood of actual support" at the time of the parent's death. 427 U.S. at 516; see also *id.* at 503, 510.

2. Scott M. Glenn, a wage-earner insured under the Social Security Act, died in an automobile accident in March 1992, eight months before petitioner Christi Haas gave birth to a child out of wedlock. One month after the child's birth (and thus nine months after the wage-earner's death), petitioner sought from an Indiana state court an order establishing that Mr. Glenn was the father of her child. Mr. Glenn's mother, who was the personal representative of the estate, testified in support of petitioner's claim. The court determined that Mr. Glenn was the father of petitioner's child. Subsequently, the child, as the only minor kin of a decedent who left no widow, was found to be entitled under state law to the proceeds of a wrongful-death action filed by Mr. Glenn's estate. Pet. App. 3a-4a, 27a-28a.

Petitioner also filed an application on behalf of her child seeking social security survivor's benefits based on Mr. Glenn's account. Pet. App. 28a. The administrative law judge (ALJ) denied benefits, because petitioner's child did not qualify as a dependent child under any of the alternatives provided by Section

416(h)(2) or (3). In rejecting eligibility under Section 416(h)(2)(A), which looks to state law governing intestate succession, the ALJ relied on Section 29-1-2-7(b) of the Indiana Code. That statute permits a child who is born out of wedlock to inherit from his father only if

> (1) The paternity of the child has been established by law in a cause of action that is filed:
>
> (A) During the father's lifetime; or
>
> (B) Within five (5) months after the father's death; or
>
> (2) The putative father marries the mother of the child and acknowledges the child to be his own.

Ind. Code § 29-1-2-7(b) (Michie 1989); Pet. App. 51a-52a.[1] Because petitioner did not file her paternity action until nine months after Mr. Glenn's death, the ALJ concluded that her child was not eligible to take from Mr. Glenn by intestate succession, and thus was also ineligible for social security benefits under Section 402(h)(2)(A). See Pet. App. 40a-44a.

The Appeals Council of the Department of Health and Human Services agreed with the ALJ that petitioner's child "is not the child of the deceased wage

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[1] The five-month period for bringing a paternity action under Indiana law applies only if the purpose of the action is to determine inheritance rights. Even after five months, Indiana allows a paternity action to be brought for purposes other than inheritance, such as the decree in the present case establishing the right of petitioner's child to bring a wrongful death action. See *S.V.* v. *Estate of Bellamy*, 579 N.E.2d 144, 148-149 (Ind. Ct. App. 1991).

earner under * * * the Social Security Act," and it accordingly denied review. Pet. App. 37a-38a.

3. Petitioner sought review of the Secretary's decision by filing a civil action in the United States District Court for the Northern District of Indiana, alleging that the application of Indiana's law to deny her child benefits under the Social Security Act violated the child's equal protection rights. Pet. 5. The district court concluded that the Indiana statute barred petitioner's claim, that the state statute is constitutional under *Lalli* v. *Lalli*, 439 U.S. 259 (1978), and that *Mathews* v. *Lucas*, *supra*, establishes that the Social Security Act is constitutional insofar as that Act incorporates the state statute. Pet. App. 33a-34a.

4. A divided panel of the court of appeals affirmed. Pet. App. 1a-26a. The court first concluded that the five-month time limit, as a matter of Indiana law, may not be waived by the decedent's estate. *Id.* at 4a-7a. The court also concluded that the five-month time limit should not be tolled while petitioner's child was *in utero*, because petitioner failed to make that argument, which in any event had been rejected by an intermediate appellate state court in *S.V.* v. *Estate of Bellamy*, 579 N.E.2d 144 (Ind. Ct. App. 1991). See Pet. App. 6a-7a.

Turning to petitioner's constitutional attack, the court noted that in *Lalli* v. *Lalli*, *supra*, this Court concluded that "even tighter limitations" on the ability of an illegitimate child to inherit were justified by "[t]he interest in protecting decedents' estates against phony claims and in winding up these estates promptly." Pet. App. 7a-8a. The court adverted to some lower court decisions that have declined to apply *Lalli* when "state law makes it impossible in the cir-

cumstances to establish paternity," but the court concluded that

> there is no impossibility here; [petitioner] knew that she was pregnant, and she had five months to sue. She must also have known that since she neither had been married to the father nor lived with him, his paternity might be questioned. All she had to do was *file* * * *. The filing would not be burdensome, and it would provide notice to the estate.

Id. at 8a. The court acknowledged that recent decisions of this Court have struck down some statutory deadlines that barred illegitimate children from seeking support from their natural fathers. *Id.* at 11a-12a (citing *Mills* v. *Habluetzel*, 456 U.S. 91 (1982), *Pickett* v. *Brown*, 462 U.S. 1 (1983), and *Clark* v. *Jeter*, 486 U.S. 456 (1988)). The court explained that those cases neither questioned *Lalli*, nor implicated the State's interest in winding up estates swiftly. Pet. App. 12a. In light of *Lalli*, the court concluded, petitioner could not have succeeded in having the Indiana statute declared unconstitutional in a state-court heirship action. See also *id* at 11a.

The court then concluded that the Social Security Act's incorporation of the Indiana statute is also constitutional. The court explained that the purpose of the Act is not to establish paternity, but "to replace the support that the child would have received from his father had the father not died." Pet. App. 9a. "Consistent with this purpose, the sections of the [Act] that define the entitlements of children born out of wedlock, * * * have been crafted * * * to determine * * * paternity plus likelihood of support." *Ibid.* Thus, "Congress has decided that, [when] other

routes to demonstrating the likelihood of support" are closed, "if the child's state was willing to allow the child to take by intestacy from the putative father [then that] is enough evidence that the putative father would have supported the child to entitle the child to benefits in lieu of that support taken away by death." *Id.* at 10a. In the court's view, this Court's decision in *Mathews* v. *Lucas*, *supra*, established that "Congress was not required to go further."

Judge Diane P. Wood dissented. Pet. App. 13a-26a. She first observed that, as a matter of state law, the Indiana courts might toll the five-month limit during the time petitioner's child was *in utero*. *Id.* at 16a. To the extent they did not do so, Judge Wood believed, then "*Mills*, *Pickett*, and *Clark*, not *Lalli*, provide the analytical approach for * * * constitutional analysis." *Id.* at 229. Under those post-*Lalli* cases, she concluded, the Indiana statute is unconstitutional. *Id.* at 23a-25a. "Because the Commissioner of Social Security cannot incorporate an unconstitutional state statute in her test for benefits," Judge Wood would have remanded the case for a calculation and award of Social Security benefits to petitioner's child. *Id.* at 26a.

5. The court of appeals, sitting en banc, vacated the decision of the panel and set the case for rehearing. Pet. App. 26a. Upon en banc rehearing of the merits, the unpublished order of the district court was affirmed without opinion by an equally divided court. *Id.* at 1a.

ARGUMENT

Petitioner renews her contention that her child was improperly denied benefits under the Social Security Act. The district court correctly resolved that

issue against petitioner. In affirming by an equally divided court, the court of appeals created neither precedent nor a live circuit conflict. Accordingly, further review is not warranted.

1. While petitioner strongly relies on Judge Wood's dissent from the now-vacated panel decision (Pet. 10, 13, 15), and suggests that half of the en banc court "presumably" agreed with Judge Wood's position (Pet. 15), petitioner's basic claim finds little support in Judge Wood's opinion. Petitioner's principal claim is that *the Social Security Act*'s incorporation of Indiana law is unconstitutional, so that the Court "need not even consider the constitutionality of the Indiana statute, standing alone." Pet. 17 n.12; see also Pet. i (question presented). Judge Wood (and, presumably, at least some of the judges who voted to reverse the district court's judgment), by contrast, advanced the theory that *the Indiana statute* is unconstitutional, because it is purportedly inconsistent with *Mills* v. *Habluetzel*, 456 U.S. 91 (1982); *Pickett* v. *Brown*, 462 U.S. 1 (1983), and *Clark* v. *Jeter*, 486 U.S. 456 (1988).[2] Not only did Judge Wood fail to analyze or discuss the question presented by petitioner—whether the federal statute is unconstitutional if the state statute is valid—but Judge Wood's analysis of the Indiana statute is at odds with this Court's cases.

In *Trimble* v. *Gordon*, 430 U.S. 762 (1977), this Court struck down a state statute that completely barred illegitimate children from inheriting from

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[2] Indeed, as demonstrated by the concluding passage of Judge Wood's opinion, she believed that the denial of benefits was unlawful only "[b]ecause the Commissioner of Social Security cannot incorporate an unconstitutional state statute in her test for benefits under § 402(d)." Pet. App. 26a.

their natural fathers when the father died intestate. The Court recognized (*id.* at 770-771), however, that States providing a legal framework for the inheritance rights of illegitimate children have some flexibility to choose "a middle ground between the extremes of complete exclusion and case-by-case determination of paternity." The Court also specifically "reaffirm[ed] th[e] view" that "judicial deference is appropriate when the challenged statute involves the substantial state interest in providing for the stability of . . . land titles and in the prompt and definitive determination of the valid ownership of property left by decedents." *Id.* at 767 n.12 (internal quotation marks omitted).

The Court applied that principle one year after its decision in *Trimble*, when it upheld a New York statute that required paternity to be established during the life of the putative father. See *Lalli* v. *Lalli*, 439 U.S. 259 (1978). Speaking for the controlling plurality, Justice Powell, who had authored *Trimble*, concluded that the New York rule substantially advanced the important state purpose "to provide for the just and orderly disposition of property at death," *id.* at 268, by assuring that all potential claimants to an estate can be timely served with process and by preventing spurious claims that can be difficult to disprove after the putative father's death, *id.* at 268-271. Justice Powell also recognized that a State's use of categorical rules will sometimes deny valuable property to some illegitimate children who, under a case-by-case approach, might establish their entitlement consistently with the broad statutory purposes. Indeed, the Court upheld the New York scheme on the ground that, as a general matter, it substantially served important state interests, even though those

interests were not served in some cases, since "few statutory classifications are entirely free from the criticism that they sometimes produce inequitable results." *Id.* at 273 (plurality opinion).[3]

Nothing in *Mills* v. *Habluetzel*, *supra*, and its progeny, casts doubt on the continuing vitality of *Lalli*. Those cases involved proceedings in which illegitimate children sought support from the putative fathers, but were barred by state statutes of limitations (ranging from one to six years from the child's birth) that effectively shielded the fathers from their support obligations. The Court concluded that those limits unreasonably burdened the ability of the children to seek support from their fathers, while not significantly advancing the State's interest in preventing stale or fraudulent claims, especially given the ready availability of highly-probative genetic evidence. See *Clark*, 486 U.S. at 463-465.[4] This case, however, unlike *Mills* and its progeny, involves a limitation tied to the death of the putative father, not the birth of the child. Accordingly, none of those

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[3] Then-Justice Rehnquist and Justice Blackmun would have upheld the New York statute on an even more deferential standard, thus providing the majority for the judgment of the Court. *Lalli*, 439 U.S. at 276-277.

[4] Apparently recognizing that the death of the putative father can eliminate an important source of genetic materials or other objective proof of paternity, petitioner relies on a newspaper article to suggest, in a footnote, that comparably reliable results might be obtained in some cases "by testing both paternal grandparents." Pet. 14 n. 9. Petitioner does not suggest that anything properly in the record of this case could enable this Court to assess the nature or reliability of such new techniques, or their proper role in deciding the constitutional validity of Indiana's law.

cases involved the State's interest in winding up estates swiftly—*i.e.*, the interest that supported the result in *Lalli*—nor did they confront the peculiar dangers of staleness and fraud that arise when the putative father no longer can effectively controvert the mother's allegation. For those reasons, and notwithstanding the post-*Lalli* decisions on which Judge Wood relied, this Court has continued to recognize the validity of "statutory provisions that have an evident and substantial relation to the [government's] interest in providing for the orderly and just distribution of a decedent's property at death." *Reed* v. *Campbell*, 476 U.S. 852, 855 (1986) (citing *Lalli*).

Because *Lalli* would preclude petitioner's child from successfully setting aside the provisions of Section 29-1-2-7(b) of the Indiana Code, the child could not maintain a claim under that statute, and thus be declared Mr. Glenn's heir, in the Indiana courts. Petitioner does not even attempt to offer an argument to the contrary.[5]

2. Petitioner concentrates instead on arguing that, irrespective of the validity *vel non* of Indiana's law, the Social Security Act's incorporation of that law is unconstitutional, because "the federal government cannot bootstrap on such a uniquely local interest to justify the constitutionality of a federal statute." Pet. 17. The constitutionality of the federal statute, however, is established by *Mathews* v. *Lucas*, 427 U.S. 495 (1976), a case in which this Court concluded that the criteria outlined by the Social Security Act are permissibly and reasonably related to the

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[5] Indeed, petitioner acknowledges (Pet. 16-17 n.12) that it would be necessary to overrule or limit *Lalli* in order for a challenge to the Indiana statute to succeed.

likelihood of dependency at the time of the wage earner's death—the core concern of the federal enactment. See *id.* at 507-516.[6] Petitioner does not address or distinguish *Mathews*, other than to endorse a passing suggestion by Judge Wood to the effect that the case "did not address whether the application of the presumption of dependency based on intestate succession was constitutional." Pet. 7 (citing Pet. App. 17a). But the passage of *Mathews* cited by Judge Wood merely reflects this Court's decision not to revisit the district court's *factual* conclusion that the Lucas children could not inherit under the applicable Rhode Island law. See 427 U.S. at 501 ("None of these factual matters is at issue here."). Indeed, contrary to petitioner's assertion, the result in *Mathews* was informed by the Court's review of *all* statutory factors that Congress thought relevant to the question of dependency, see *id.* at 510-516, and it specifically embraced the factor at issue here—*i.e.*, whether the "state['s] intestacy law provides that a child may take personal property from a father's estate." *Id.* at 514-515.

In the end, petitioner's failure to confront the holding of *Mathews* appears to be simply a by-product of her belief that *Mills* and its progeny have displaced all other authority in cases involving claims to "support" (as opposed to inheritance) by illegitimate children. See Pet. 10, 13. None of the cases on which petitioner relies, however, purported to cast doubt on the continuing validity of *Mathews*; to the contrary, *Mills* itself cited *Mathews* as authoritative. *Mills*,

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[6] In this case, because the putative father died only one month after conception, any likelihood of actual dependency would have been speculative at the time of death.

456 U.S. at 99 n.5; see also *Clark*, 486 U.S. at 461; *Pickett*, 462 U.S. at 7-8. Moreover, while the Social Security Act aims to replace the "support" that death has taken from a child who was reasonably likely to have been dependent upon the wage earner at the time of his death, that "support" is like any ordinary bequest or inheritance in a critical respect: it is a claim against a third-party (the deceased wage earner's Social Security account) that is triggered by a parent's death. Indeed, as Chief Judge Posner noted (Pet. App. 4a-5a), the facts that the putative father is no longer alive, and that other parties with ready access to probative evidence ordinarily have no incentive to safeguard the fiscal interests of the Social Security program, pose dangers of collusion and fraud that mirror those that support the constitutionality of state inheritance statutes.[7] In these circumstances, it is difficult to justify petitioner's facile assumption that *Mills* and its progeny control the analysis, much less that those cases overruled *sub silentio* a controlling decision of this Court.

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[7] In some cases, as was true in *Lawrence* v. *Chater*, 116 S. Ct. 604 (1996), allowing the claim of an illegitimate child would reduce the amount of benefits received by the wage-earner's widow and dependent children. See Brief for Respondent at 6 in No. 94-9323, (noting that decedent's widow and her child contested ALJ's determination that putative child of decedent could share in the benefits of decedent's account). In such circumstances, prolonging the time during which other claimants may come forward, beyond that allowed by the state law of intestacy, could defeat the reasonable expectations of the wage-earner's heirs that they alone will share in the property attributable to the decedent, including the proceeds of his Social Security account.

3. Finally, petitioner contends that the decision below conflicts with the decisions of the Eleventh Circuit in *Daniels* v. *Sullivan*, 979 F.2d 1516 (1992), and *Handley* v. *Schweiker*, 697 F.2d 999 (1983). While *Daniels* and *Handley* indicate that this case might be resolved differently by the Eleventh Circuit, but cf. *Orsini* v. *Sullivan*, 903 F.2d 1393 (1990), the court of appeals did not issue an opinion in this case. Its unpublished order merely disposes of the particular dispute between the particular parties, and it has no precedential value. See *Arkansas Writers' Project, Inc.* v. *Ragland*, 481 U.S. 221, 234 n.7 (1987); *Neil* v. *Biggers*, 409 U.S. 188, 192 (1972). As this Court explained in *Neil*, "[i]t is, indeed, the settled practice in such [a] case to enter a judgment of affirmance; but this is only the most convenient mode of expressing the fact that the case is finally disposed of in conformity with the action of the court below, and that that court can proceed to enforce its judgment. The legal effect would be the same if the appeal, or writ of error, were dismissed." 409 U.S. at 192, quoting *Durant* v. *Essex Co.*, 74 U.S. (7 Wall.) 107, 112 (1869). Because the Seventh Circuit did not issue any decision on the merits, there is no disagreement among the appellate courts that warrants this Court's review. [8]

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[8] Petitioner cites three cases where this Court granted review of a court of appeals decision affirming by an equally divided court. Two of those cases, however, came to this Court on appeal, and the Court accordingly believed itself obligated to exercise jurisdiction. See *Supreme Court of New Hampshire* v. *Piper*, 470 U.S. 274, 279 (1985); *Frisby* v. *Schultz*, 487 U.S. 474, 478-479 (1988) (later granting certiorari to avoid merits challenge to appellate jurisdiction). In only one case, see *Hill* v. *Lockhart*, 474 U.S. 52, 53 (1985), did the Court grant certiorari

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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to review a judgment rendered by an equally divided court of appeals. In our view, the paucity of precedent for the course sought by petitioner at least indicates that the Court engages in such discretionary review only in the most exceptional circumstances—which we do not believe are present here.